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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Nord-Sud XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 April 1998]

OBSTACLES TO CONFLICT RESOLUTION IN SRI LANKA

(a) Political basis for the resolution of the Tamil question within the Island of Sri Lanka

1. The armed conflict in Sri Lanka can be resolved if provision is made for the treatment of all religious communities as equals within a secular State, and for the sharing of power in the Centre between the Tamil and Sinhalese peoples and the devolution of power to the regions.

(b) The barriers to conflict resolution in the 1978 United National Party (UNP) regime

2. The obstacle to re-establishing a secular State can be found in article 9 of the Constitution which specifies that: "The Republic shall give to Buddhism the foremost place". The provision privileged the Buddhists (who are Sinhalese) to the detriment of Hindus and Muslims (who are Tamils) and Christians (who are found among Sinhalese and Tamils). Tamils criticized the provision as a departure from the secular traditions and they underlined the return to a secular political framework as an essential condition for resclving the Tamil question.

3. The obstacles to the sharing of power in the Centre and devolution of power to the region can be found in:

- Article 2 of the Constitution, which states that "The Republic of Sri Lanka is a Unitary State."

- Article 76 of the Constitution, which states that:

"(1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with legislative power.

(2) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make, in any law relating to public security provision empowering the President to make emergency regulations in accordance with such law.

(3) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes, including the power:

(a) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;

(b) to make by order any law or any part thereof applicable to any locality or to any class of persons; and

(c) to create a legal person, by an order or an act.

In subparagraphs (a) and (b) of this paragraph, "law" includes existing law.

(4) Any existing law containing any such provision as aforesaid shall be valid and operative."

4. Under the operation of articles 2 and 76, the Constitution preserved the unitary State and permitted political decentralization (through delegation of authority) only. The Provincial Councils (PCs) established under the 1987, 13th Amendment, therefore, are institutions of political decentralization. The PCs are essentially Municipal Councils (MCs) and the so-called "statutes", or subordinate legislation of PCs are little more than the Ordinances of MCs. The PCs are inherently incapable of providing the institutional framework for political devolution (through shared sovereignty), the indispensable pre-condition for resolving the Tamil question.

(c) Admission of the existence of the constitutional barriers

5. The President Kumaratunga's Devolution Proposals of August 1995 retained the provision regarding the primacy of Buddhism and was silent on article 2. However it conceded the need to repeal article 76 as a necessary pre-condition to resolving the Tamil question (para. IX).

(d) The barriers to conflict resolution in the October 1997 Parliamentary Select Committee Report on Constitutional Reform (Draft Constitution) of the Peoples Alliance (PA) regime led by the Sri Lanka Freedom Party (SLFP)

6. Obstacle to re-establishing a secular State: The Draft Constitution reiterated that Buddhism shall enjoy "the foremost place" and went further to entrench Buddhist supremacy by providing for the constitution of a "Supreme Council" of Buddhist Clergy (art. 7).

7. Obstacles to the sharing of power in the Centre and devolution of power to the regions: article 76 of the 1978 Constitution was reproduced in article 92 of the Draft Constitution:

"(1) Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any such legislative power.

(2) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make, in any law relating to public security, provision empowering the President to make emergency regulations in accordance with such law.

(3) It shall not be a contravention of the provisions of paragraph (1) of this article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation for prescribed purposes, including the power:

(a) to appoint a date on which any law or any part thereof shall come into effect or cease to have effect;

(b) to make by order any law or any part thereof applicable to any locality or to any class of persons; and

(c) to create a legal person, by order or an act and for the purposes of subparagraphs (a) and (b) of this paragraph, "law" includes existing law.

(4) Subject to the provisions of the Constitution, any existing law containing any such provision as aforesaid shall be valid and operative."

8. So the Regional Councils (RCs) proposed in the Draft Constitution too would lack legislative power. They, like the present PCs, would also be little more than MCs. They are institutions for administrative decentralization and so utterly irrelevant to conflict resolution.

9. This clearly exposes the irrelevance of the term "Union of Regions" (art. 1 (1)), which replaced article 2, and the provisions for "The Devolution of Power to Regions" (chap. XV). The title "Union of Regions" by itself means nothing. For the 1978 Constitution spelled out the name of the country as "The Democratic Socialist Republic of Sri Lanka"; however, there never was, and still is nothing, remotely socialist about Sri Lanka. The term "Union of Regions" is a political smokescreen drawn to mask article 92, which emptied the devolution terminology of any significant polical or constitutional meaning.

10. Since article 92 was included in the 1997 Draft Constitution, the provisions for so-called "devolution of power" are an unconscionable deception. It is an attempt to deceive the Tamil people. It is also an unprincipled manoeuvre to hoodwink the international community into believing that the Draft Constitution is a genuine basis for resolving the Tamil question.

(e) <u>The way forward</u>

11. The Draft Constitution as it stands now provides no basis whatsoever for negotiations between the PA regime and the Tamil people. The PA regime must first delete articles 7 and 92. That will open the way for genuine negotiations and indicate the regime's sincerity to reach a negotiated settlement with the Tamil people through the Liberation Tigers of Tamil Eelam (LITTE).